

# SENATE BILL REPORT

## ESSB 5583

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As Amended by House, April 13, 2009

**Title:** An act relating to improving the effectiveness of water bank authorization and exchange provisions.

**Brief Description:** Improving the effectiveness of water bank and exchange provisions.

**Sponsors:** Senate Committee on Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Morton, Fraser, Sheldon and Shin; by request of Department of Ecology).

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/03/09, 2/10/09 [DPS, DNP].

Passed Senate: 3/12/09, 46-1.

Passed House: 4/13/09, 93-0.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 5583 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Hatfield, Marr, Morton, Ranker and Sheldon.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Holmquist.

**Staff:** Karen Epps (786-7424)

**Background:** The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's Trust Water Rights Program and managed by the Department of Ecology (Ecology). Two trust water rights systems, one for the Yakima River basin and the other for the rest of the state, are established in state law.

Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems. Trust water rights acquired in areas

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with an approved watershed plan must be consistent with any plan provisions regarding acquisition.

Ecology may use the Trust Water Rights Program in the Yakima River basin for water banking purposes. Water banking may be used for mitigation, future water supply needs, or any statutory beneficial uses consistent with terms established by the transferor. The water bank must not cause detriment or injury to existing rights, issue temporary rights for new potable uses, administer federal project water rights, or allow carryover of stored water from one water year to another. Water banking may also be used to document transfers of water rights to and from the Trust Water Rights Program and to provide a source of water rights that Ecology can make available to third parties on a temporary or permanent basis for any allowed beneficial use.

**Summary of Engrossed Substitute Bill:** The Trust Water Rights Program may be used by Ecology for water banking purposes statewide. Ecology may acquire both surface and groundwater rights for the Trust Water Rights Program. Water Banking may be used to allow carryover of stored water in the Yakima basin, from one water year to the next, so long as it does not negatively impact total water supply available.

Ecology must issue a water right certificate for trust water that indicates the quantity of water transferred to trust, the reach or reaches of the stream or body of public groundwater, and the use or uses to which it may be applied.

If nonuse occurred in the five years preceding the donation or lease, Ecology must calculate the amount of water to be acquired by looking at the extent to which the right was exercised during the most recent five-year period preceding the date where sufficient cause for nonuse was established. In addition, when calculating annual consumptive quantity of a trust water right, Ecology must look to the most recent five-year period of continuous beneficial use prior to transfer into the trust water rights program. For water rights put into the Trust Water Rights Program that are exempt from relinquishment because the water is claimed for power development purposes or municipal water supply purposes, Ecology will look at the amount of water eligible to be acquired based on historical beneficial use. Ecology may adopt rules as necessary to implement the program.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Water banking can be used to address critical water shortages. The statute is currently ambiguous about whether the trust water program can establish water banks in areas of the state other than the Yakima Basin. There is concern about how watershed management partnerships would work. This is very important legislation to assist watersheds to continue implementation of their plans. There are about 40 watersheds around the state that have taken on watershed planning and at least 15 of those

are interested in water banking as a means of helping them meet future needs. It is very important that the law be clarified. Support of water banking has gone statewide, so the statute needs to be expanded to accommodate water banking statewide.

CON: There is concern that by using interlocal agreements that this will limit a water and sewer district's participation in water banking. There is concern that using interlocal agreement could cause some entities to be cut out of the process. Ecology should be left in control of water held in trust. In terms of managing water, Ecology should be managing water banks.

OTHER: The use of interlocal agreements could cause involvement from too many interested parties or not enough involvement from interested parties. Ecology can manage the water banks through the trust water program.

**Persons Testifying:** PRO: Senator Marr, prime sponsor; Richard Reich, Muckleshoot Indian Tribe; Ken Slattery, Ecology; Bill Clarke, Washington PUD Association.

CON: Dawn Vyvyan, Yakama Nation; Scott Hazelgrove, Washington Association of Sewer & Water Districts.

OTHER: Kathleen Collins, Washington Water Policy Alliance.

**House Amendment(s):** Requires Ecology to exercise its authority in a manner that protects trust water rights. Allows Ecology to notify affected local governments and affected federally-recognized tribal governments electronically prior to initiating use of the Trust Water Rights Program for water banking purposes for the first time in each water resource inventory area. Adds irrigation districts and public ports to the definition of "local government" for purposes of electronic notification. Requires trust water donations and short-term trust water leases to be reviewed under the same standards as current law for donated water rights. Requires Ecology to provide electronic notice for trust water donations and short-term trust water leases.